

New Mexico Taxation and Revenue Department
**2017 Annual Report of Non-Resident
 Remittees Holding an Agreement to Pay
 Tax on Oil and Gas Proceeds**



Page 1 of _____

Check if amended

| | | | | |
|--|-------------------------------|---|-----------------|---|
| Remitter's name | | Remitter's FEIN or SSN | | Line 1. Total New Mexico gross oil and gas proceeds distributed by the remitter. |
| | | Check one: FEIN <input type="checkbox"/> SSN <input type="checkbox"/> | | |
| Remitter's Address - (Number and street) | City | State | Postal/ZIP code | FOR DEPARTMENT USE ONLY |
| If foreign address, enter country | Foreign province and/or state | | | |

| Remittee's name, street address, city, state, and ZIP code | Column 2 Remittee's SSN or FEIN | Column 3 Remittee's oil and gas proceeds | Column 4 Tax withheld and paid by the remitter |
|---|---|---|---|
| Mark if outside the U.S. <input type="checkbox"/> | Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN | | |
| Mark if outside the U.S. <input type="checkbox"/> | Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN | | |
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| Mark if outside the U.S. <input type="checkbox"/> | Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN | | |

File this report online through Taxpayer Access Point (TAP) at <https://tap.state.nm.us>. Under **FOR BUSINESSES**, click **Make a Payment** and in **Account Type**, select **OGP Remitter**. If you cannot electronically file, see the instructions. For help completing this report, call (505) 827-0825.

Line 2. Total of this page.

2.

Line 3. Total from all pages.

3.

I declare I have examined this report and to the best of my knowledge and belief it is true, correct, and complete.

Authorized signature _____ Date _____

Phone number _____ Email address _____

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Supplemental Page

| | |
|------------------------|---|
| Remitter's name | Remitter's FEIN or SSN <div style="float: right; text-align: right;"> Check one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN </div> |
|------------------------|---|

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| Remittee's name, street address, city, state, and ZIP code | Column 2 Remittee's SSN or FEIN | Column 3 Remittee's oil and gas proceeds | Column 4 Tax withheld and paid by the remitter |
|---|---|---|---|
| Mark if outside the U.S. <input type="checkbox"/> | Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN | | |
| Mark if outside the U.S. <input type="checkbox"/> | Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN | | |
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| Mark if outside the U.S. <input type="checkbox"/> | Mark one: <input type="checkbox"/> FEIN <input type="checkbox"/> SSN | | |

If you need more space, print this supplemental page directly from the website and attach the additional supplemental pages to the first page of this report. Reproducing from a photocopy reduces the readability of the bar code on scanning equipment.

Line 2. Total withholding on this page.

New Mexico Taxation and Revenue Department
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Holding an Agreement to Pay Tax on Oil and Gas Proceeds
Instructions**

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Who Must File: Remitters of oil and gas proceeds from oil and gas production from a well located in New Mexico who are subject to withholding tax from payments according to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Sections 7-3A-1 through 7-3A-9 NMSA 1978] are required to submit information returns to the Department annually. For oil and gas proceeds paid on or after January 1, 2012, Form RPD-41374, *Annual Report of Non-Resident Remittees Holding An Agreement to Pay Tax on Oil and Gas Proceeds*, is used to report the distribution of oil and gas proceeds to each non-resident remittee who entered into an agreement to pay the tax on oil and gas proceeds pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. For the 2011 filing requirements, see Form RPD-41360.

Remitters are also required to file electronically, Forms 1099-Misc, or for those entities that do not receive an IRS form 1099-Misc, a *pro forma* 1099-Misc or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, to the Department for each remittee from whom oil and gas proceeds from a New Mexico well was paid and report the New Mexico tax withheld. If the oil and gas proceeds paid on Form 1099-Misc is a combination of oil and gas proceeds from oil and gas production in multiple states, separately state the oil and gas proceeds derived from New Mexico oil and gas production and the amount of New Mexico tax withheld.

File Electronically: If the remitter has more than 50 payees who receive New Mexico oil and gas proceeds to report, remitters are required to electronically file Form RPD-41374 through the Department's website, and Forms 1099-Misc, *pro forma* 1099-Misc or Form RPD-41285 electronically, either through the Combined Federal/State Filing Program or through the Department's website. See "Where to File" later in these instructions. If the remitter has more than 50 New Mexico payees, and is unable to file electronically because a hardship exists, the remitter may request Department approval to file by paper. The remitter may request approval by filing Form RPD-41350, *E-File Exception Request Form*. The request must be received by the Department at least 30 days before the taxpayer's electronic report is due.

Other Reporting Requirements: Remitters are also required to provide sufficient information to enable the remittees to comply with the provisions of the Income Tax Act and the Corporate Income and Franchise Tax Act, with respect to the remittee's share of the gross oil and gas proceeds. A remitter may use federal Form 1099-Misc, if required to be filed by the IRS, a *pro forma* 1099-Misc, or Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, to report to the remittees the gross oil and gas proceeds paid and New Mexico tax withheld. These forms must be provided to the remittee by February 15th of the year following the year for which the statement is made.

NOTE: For tax years beginning January 1, 2011, Form RPD-41283, *Annual Summary of Oil and Gas Proceeds Withholding Tax*, is no longer required to be mailed to the Department. Form RPD-41283 should be completed and retained by the remitter. Form RPD-41283 reconciles the total oil and gas proceeds

withheld and reported on Form RPD-41284 and the amounts withheld from the remittees.

A remitter, who is also a pass-through entity (PTE), may also need to file Form RPD-41359, *Annual Statement of Pass-Through Entity Withholding*, and Form RPD-41367, *Annual Withholding of Net Income of a Pass-Through Entity Detail Report*. As a PTE, similar withholding requirements are imposed on the allocable net income of the pass-through entity. If you earn net income for the owners, members, partners or beneficiaries of your organization, then pass-through entity net income and withholding tax is reported on these forms. Forms RPD-41374, *Annual Report of Non-Resident Remittees Holding an Agreement to Pay Tax on Oil and Gas Proceeds*, and RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, described in the remainder of this document, are used only when oil and gas proceeds are paid to a remittee.

When to File: Form(s) RPD-41374 and Forms 1099-Misc, *pro forma* 1099-Misc or Form RPD-41285 are due on or before the last day of February of the year following the close of the calendar year in which the oil and gas proceeds were paid. If the due date of the return falls on a Saturday, Sunday or state or national legal holiday, the return is timely if the postmark bears the date of the next business day. If no payment of oil and gas proceeds was made for a calendar year, no filings are required.

Penalty for Failure to File. A \$5 penalty will be assessed for failing to file Form RPD-41374 timely. You may pay the penalty through the Department's website at <https://tap.state.nm.us>, or submit your payment by attaching a check or money order to your paper return.

Where to File: File online using the Department's website at <https://tap.state.nm.us>. First-time e-filers will need to create a login name and password. For assistance call (505) 827-0825.

If granted an exemption to electronically file Form RPD-41374, or you have 50 or fewer New Mexico payees and choose to file this form in paper format, submit this completed form to: New Mexico Taxation and Revenue Department, P.O. Box 25127, Santa Fe, NM 87504-5127.

The income and withholding tax information must be submitted on Forms 1099-Misc, *pro forma* 1099-Misc or New Mexico Form RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, and must be submitted in one of the following ways:

1. Submit 1099-Misc forms by electronic transmission through the Combined Federal/State Filing Program with IRS approval (State records must be included and must bear codes for forwarding to New Mexico), **or**
2. Submit forms 1099-Misc, *pro forma* 1099-Misc or New Mexico Form RPD-41285 electronically* using the Department's website, **or**
3. If 50 or fewer payees, you may submit the paper forms to New Mexico Taxation and Revenue Department, P.O. Box 5779, Santa Fe, New Mexico 87502-5779.

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*To obtain specific information regarding the electronic file, log in to the web file page on the Department's website at

<https://tap.state.nm.us>.

Remitters should be aware that the Department is required to compare the tax information received from the remitters with the records of the remittees and if the Department determines that the remittee is not paying the proper tax on oil and gas proceeds, the Department may request that the remitter show reasonable cause for not withholding (see "Exceptions to the Requirement to Withhold" in these instructions). If the Department determines that a non-resident remittee is not paying New Mexico income tax on the oil and gas proceeds, the Department will notify the remitter that the remitter must withhold from future oil and gas proceeds paid to the remittee. If the remitter did not withhold because the remitter and remittee entered into an agreement pursuant to [Section 7-3A-3(G) NMSA 1978], the agreement must be revoked and the remitter will be held responsible for future tax required to be withheld from the remittee.

INSTRUCTIONS FOR COMPLETING THE FORM

Enter the name and address of the remitter, the federal identification number and mark the box indicating whether the number is a federal employer identification number (FEIN) or a social security number (SSN). Also enter the total New Mexico gross oil and gas proceeds distributed by the remitter in the calendar year of this return.

Column 1. Enter the name and address of all recipients (remittees) of oil and gas proceeds made by this payor (remitter) with whom a valid signed Form RPD-41353, *Owner's or Remittee's Agreement to Pay Withholding on Behalf of a Pass-through Entity or Remitter*, is on file. The agreement must not be revoked. Form RPD-41353 is required documentation showing that the remitter and remittee have entered into an agreement that the non-resident remittee agrees to pay the New Mexico tax on the oil and gas proceeds paid to the remittee. If an individual, enter the first, middle initial and last name of the remittee. Mark the box if the address is outside the U.S.

If you have a foreign address, enter the street address, city name and postal code in the appropriate line. Also complete the spaces for the foreign province and/or state and country. Follow the country's practice for entering the foreign postal code, the province or state, and country. Do not abbreviate the country name.

Column 2. Enter the remittee's federal identification number and mark the box indicating whether the number is a federal employer identification number (FEIN) or a social security number (SSN).

Column 3. Enter the remittee's share of the total gross New Mexico oil and gas proceeds paid. Line 1, *Total New Mexico gross oil and gas proceeds distributed by the remitter*, equals the total gross New Mexico oil and gas proceeds distributed as reported on Forms RPD-41374, 1099-Misc, and Form RPD-41285.

Column 4. Enter the tax withheld from the remittee's oil and gas proceeds.

Complete **line 2** for each page, entering the sum of column 4 for the page. Also complete **line 3** on the first page showing the total tax withheld and paid by the remitter to the Department on Form RPD-41284, from all pages.

Sign and date the report. The remitter or the remitter's authorized representative must sign and date the report. Also enter the contact phone number and e-mail address.

IMPORTANT DEFINITIONS:

"Remittee" means a person who is entitled to payment of oil and gas proceeds by a remitter.

"Remitter" means a person who pays oil and gas proceeds to any remittee.

"Oil and gas" means crude oil, natural gas, liquid hydrocarbons or any combination thereof, or carbon dioxide.

For definitions of *"Oil and gas proceeds"* see "What are gross oil and gas proceeds?" below.

What are gross oil and gas proceeds?

"Oil and gas proceeds" means any amount derived from oil and gas production from any well located in New Mexico and payable as royalty interest, overriding royalty interest, production payment interest, working interest or any other obligation expressed as a right to a specified interest in the cash proceeds received from the sale of oil and gas production or in the cash value of that production. Oil and gas proceeds excludes "net profits interest" and other types of interest the extent of which cannot be determined with reference to a specified share of the oil and gas production and excludes any amounts deducted by the remitter from payments to interest owners or paid by interest owners to the remitter that are for expenses related to the production from the well or cessation of production from the well for which the interest owner is liable.

"Gross oil and gas proceeds" means the amount of oil and gas proceeds subject to oil and gas proceeds withholding tax and includes amounts deducted by the remitter for expenses and severance taxes, but does not include amounts deducted for expenses or taxes prior to receipt by the remitter. If a taxpayer receives a Form 1099-Misc for its oil and gas proceeds, the gross amount is the amount reported on federal Form 1099-Misc in box 2--royalties, and in box 7--non-employee compensation.

The following payments are not subject to the oil and gas proceeds withholding tax:

- "net profits interest" and other types of interest which cannot be linked to a specified share of the oil and gas production.
- advance royalty payments, bonus payments, minimum royalty payments, shut-in payments and rental payments, provided that the payments are not offset against a share of future production.

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The well must be located in New Mexico, but if the production is from a well subject to a unit or communitization agreement whose area crosses state boundaries, the amount attributable to “oil and gas production from any well located in New Mexico” may be derived through the allocation methodology set out in the agreement.

Adjustments to the amount withheld: If a remitter receives oil and gas proceeds from which an amount has been deducted and withheld pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the remitter may take credit for that amount in determining the amount the remitter must withhold and deduct.

Exceptions to the Requirement to Withhold.

1. If the amount to be withheld from the payment is less than ten dollars (\$10) or if the sum of all payments made to that remittee by the remitter, including the subject payment, in the calendar quarter is thirty dollars (\$30) or less.
2. If the remittee is an insurance company and falls under the provisions of [Section 59A-6-6 NMSA 1978], no withholding is required.
3. At the option of a remitter, a remitter may agree with the remittee that the remittee pay the amount that the remitter would have been required to withhold and remit to the Department on behalf of the remittee pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act. The remittee remits the tax required to be withheld using a form of payment such as estimated payments or withholding. The remittee can also satisfy the terms of the agreement by filing its New Mexico income tax return and paying the tax due. The remitter must have a completed Form RPD-41353, *Owner’s or Remittee’s Agreement to Pay Withholding on Behalf of a Pass-Through Entity or Remitter*, on file at the time it files its annual reporting requirements for the tax year to which the agreement pertains. If the Department notifies the remitter that the remittee has failed to remit the required payment, the agreement is no longer acceptable by the Department as reasonable cause for failure to withhold. The remitter is not responsible for withholding on oil and gas proceeds paid to the remittee prior to the Department’s notification.
4. The remittee maintains its place of business or residence in New Mexico:
 - If the remittee’s address on Form 1099-Misc, *pro forma* 1099-Misc or RPD-41285, *Annual Statement of Withholding of Oil and Gas Proceeds*, is a New Mexico address;
 - If an individual, a signed Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the individual is a resident of New Mexico and declaring the physical location of the individual’s abode in New Mexico;
 - If a corporation, a signed Form RPD-41354, *Declaration of Principal Place of Business or Residence in New Mexico*, is on file that the corporation’s principal place of business is in New Mexico, or

- If a corporation incorporated in New Mexico, the corporation’s incorporation papers are on file, with sufficient portions of those papers to demonstrate incorporation in New Mexico, or information from the Secretary of State website indicating that the corporation is a New Mexico corporation in good standing and its address.
5. Documentation is on file showing that the remittee is granted exemption from the federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code, including a copy of the remittee’s federal Form W-9 or a copy of the determination letter from the IRS. The obligation to deduct and withhold from payments to organizations identified in this paragraph applies if that income constitutes unrelated income.
 6. Documentation is on file showing that the remittee is the United States, New Mexico or any agency, instrumentality or political subdivision of either.
 7. Documentation is on file showing that the remittee is a federally recognized Indian nation, tribe or pueblo or any agency, instrumentality or political subdivision thereof.
 8. Documentation is on file showing that the remitter’s payment to the remittee is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners. Acceptable proof includes --but is not limited to-- written notification from a remittee or internal documentation such as signed division orders demonstrating that the payment is subject to further distribution by the remittee as a remitter to working interest owners, royalty interest owners, overriding royalty interest owners and/or production payment interest owners.

If you believe that you have a valid reason for not withholding from a remittee, other than the reasons listed above, you must obtain approval from the Secretary before you file your return. Please include with your request detailed information to support an alternative reasonable cause for not withholding. To request the Secretary’s approval, submit a written request to the Albuquerque District Office at New Mexico Taxation and Revenue Department, Corporate Income Tax Audit Supervisor, P.O. Box 8485, Albuquerque, NM 87198-8485. For assistance call 505-841-6221.

Amending: Check the amended indicator box if you are amending a previously filed Form RPD-41374, *Annual Report of Non-Resident Remittees Holding An Agreement to Pay Tax on Oil and Gas Proceeds*. If a refund is due because you overpaid tax on Form RPD-41284, *Quarterly Oil and Gas Proceeds Withholding Tax Return*, you must amend the Form RPD-41284, to which you incorrectly reported. Do not attempt to obtain a refund when filing Form RPD-41374. If requesting a refund due to an overpayment of tax withheld, complete Form RPD-41071, *Application for Tax Refund*, and submit it with the amended return, RPD-41284.